

Enduring Power of Attorney – Personal Matters

There are two certainties in life, death and taxes but unfortunately we do not have a crystal ball to predict whether we will suffer dementia eg Alzheimer's, or simply lose the capacity to look after ourselves. Appointing an Attorney for Personal Matters can provide you with peace of mind knowing there is someone looking after your needs.

What is an Enduring Power of Attorney?

An Enduring Power of Attorney is a legal document which allows you (the Principal) to appoint a person (the Attorney) to make personal and lifestyle decisions on your behalf if or when you are incapable of making them for yourself.

What decisions can my Attorney make?

Your Attorney can make any lifestyle decisions which you are able to make on your own behalf. They can decide where you live, how your healthcare is maintained, whether you can work and who can visit you.

Your Attorney also has certain responsibilities; they must take into account any wishes you have expressed, they must act in your best interests and where possible make the same decision that you would have made.

When appointing your Attorney you have the ability to restrict or limit the powers of your Attorney. You can also include wishes you would like your Attorney to take into account when they are making decisions on your behalf.

In relation to healthcare decisions your Attorney may consent to medical procedures but he or she cannot refuse the consent for a medical procedure. Additionally, just like a person appointed under a Medical Power of Attorney your Attorney cannot consent to treatments which could lead to your infertility, the termination of a pregnancy or the removal of tissue for transplantation.

Your Attorney also does not have the authority to make financial decisions on your behalf (unless they are appointed for Financial Matters).

Can you set limits or conditions?

The Powers of Attorney Act 2014 regulates what your Attorney can and cannot do on your behalf, however you may limit, restrict or increase the decision making power of your Attorney. For example you can include a requirement for your Attorney to consult a particular person before changing your accommodation or you may choose to include a wish to have in-home-care rather than placed into a nursing home.

Who should I appoint as my Attorney?

You can appoint any person who is over 18 years of age and has the capacity to act provided they are not your health care or accommodation provider. You can also appoint two or more attorneys who may act jointly or independently. The person however, must agree to their appointment as your Attorney.

Your Attorney should be someone you trust will make the right decisions for you, someone who will respect your wishes and will follow them to the best of their ability. You may also appoint an Alternative Attorney should your first Attorney be unable or unwilling to act.



Why should I give someone this power?

You should consider appointing someone as your Attorney for Personal Matters for the following reasons:

1. Reassurance - To ensure there is someone you trust making decisions regarding your well-being. For example deciding where you live or ensuring you are fed and clothed or that you receive medical treatment as required.

2. Choice - An accident or unexpected illness may render you incapable of looking after yourself. If you have not appointed someone to act on your behalf, then the Victorian Civil and Administrative Tribunal (VCAT) will appoint someone to act as your Attorney. The person VCAT appoints may not be someone you would have appointed if you had the choice such as a Trustee company.

3. Peace of Mind - If you elect to appoint an Attorney whilst you have the mental capacity to do so, you can decide who and how you will be looked after when you are no longer capable of making lifestyle decisions for yourself. Ensuring that the person making decisions on your behalf is someone you trust and who will fulfil your wishes.

You are in control - you have the ability to limit your Attorney's decision making powers or set conditions for your Attorney. This power is removed from you once you lose mental capacity.

Ruth's Story

Ruth moved in with her son Tom after the death of her husband. With age Ruth became frail and prone to falling.

Ruth also had the onset of dementia. In the past twelve months Ruth had fallen twice, - the first breaking her shoulder with severe bruising, the most recent fall breaking her hip. Each time Ruth was taken to hospital by her son Tom.

The hospital staff became concerned for Ruth's safety and Tom's ability to look after her. They made enquires as to whether Ruth had appointed her son as her Attorney. Unfortunately for Ruth she thought her next of kin would be the person to make decisions on her behalf and didn't think she needed to formalise the appointment.

The hospital made an application to VCAT to have an Attorney appointed for Ruth.

At the VCAT hearing, submissions were heard from the hospital and from Tom and his siblings (who supported him as the appointed Attorney). VCAT decided that it was in Ruth's best interests that the Public Advocate be appointed to manage Ruth's personal affairs as the family were too close to the situation to know what was in Ruth's best interests. That day Ruth was moved into a nursing home.

Ruth became distressed when she was moved into the nursing home; she wanted to move back in with her son where she was happy. Her Public Advocate however was not convinced that living with her son was in Ruth's best interest and insisted on her living in the nursing home.

If you wish to avoid Ruth's predicament, then please contact us to discuss the preparation of an Enduring Power of Attorney.

For more information, contact Michael Clohesy, Solicitor, on 0417 342 972